

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 7881 OF 2001

DATED: 09.12.2005

Between:

JC-7537 11-N Nb Sub/Clerk (GD)

Jagdish Singh Jadaun

... Petitioner

and

The Union of India through the Secretary,

Ministry of Defence, Government of India,

New Delhi and others

... Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.7881 OF 2001

ORAL ORDER:

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Heard Sri K.M. Saxena, learned counsel for the petitioner and Sri M. Ratna Reddy, learned counsel representing the respondents.

The petitioner seeks a declaration that the action of the respondents in not permitting him to join the training in the SCO-6/SCO-7 course, despite having been found medically fit by the Service Selection Board and the Appellate Medical Board, is unjust and illegal and for a consequential direction to the respondents to induct the petitioner to the next SCO course for eventual grant of the Special Commission.

Apropos Army Instruction No.5 of 1997, the Union of India in the Ministry of Defence engendered a new category of Commissioned Officers in the Indian Army by merger of existing categories of Special List and Regimental Commissioned Officers. This special cadre was designated Special Commissioned Officers (SCO). Entry to this category was open *inter alia* to serving Junior Commissioned Officers, Non-Commissioned Officers and other ranks, excluding Religious Teachers.

Petitioner while working as a Junior Commissioned Officer applied for the Special Commission. In the year 2000, he appeared for the said selection and was screened by the Service Selection Board which recommended him for grant of the Special Commission along with the SCO-6th batch. This is evident from the letter dated 18.2.2000. On such selection, the petitioner was directed to get himself examined by the Medical Board at the nearest Military hospital. As he was working as a Junior Commissioned Officer in Secunderabad, the petitioner got himself examined by the Military hospital, Secunderabad on 29.3.2000. The Secunderabad Medical Board recorded that the petitioner was unfit, on account of high frequency hearing loss in the left ear and severe mixed hearing loss in the right ear.

The petitioner sought an appellate medical opinion on the decision of the Secunderabad Medical Board. Such an appeal he preferred on 29.3.2000. As directed, he appeared at the Command Hospital (Southern Command), Pune, on

15.7.2000. There was delay on the part of the respondents in forwarding the medical records of the petitioner and also by the medical appellate board in examining the petitioner for certification of his medical status. Eventually, it was decided and permission was accorded to hold the petitioner's appellate medical board at the Base Hospital, New Delhi. This was vide a letter dated 31.7.2000. On 22.8.2000, the petitioner was found medically fit by the Appellate Medical Board. Thereafter, the petitioner represented for induction into the training course for SCOs, pursuant to his being declared medically fit. Such a representation was made on 7.11.2000. The 2nd respondent by a communication dated 30.8.2000 having considered the petitioner's representation and the chronology of events, concluded that the petitioner could be inducted into the SCO-7th course which commences in November 2000. The petitioner was also directed to give an undertaking as per the format furnished. Petitioner submitted an undertaking that in the event of being inducted into the SCO-7th course, he would not claim anterior seniority nor financial privileges of earlier training (which he had lost on account of the imbroglio of belated medical examination). Even thereafter the petitioner was not deputed to undergo the SCO-7th course. He submitted further representations. Eventually the 2nd respondent by a communication dated 14.11.2000 informed him that he would not be inducted to the SCO-7th course as he was an SCO-6 candidate and the results of his Appellate Medical Board were received late.

It is in the context of the above fact situation; the respondents conduct in denying the benefit of a commission as SCO; and in the circumstances stated above that he seeks the reliefs adverted to above.

A counter affidavit has been filed by the 3rd respondent which asserts that it is filed on behalf of the other respondents also. Responding to the allegation of the petitioner with regard to the delay in the furnishing of the report after examination by

the Appellate Medical Board, the counter affidavit states that though the petitioner had appealed for an appellate medical examination on 29.3.2000, till 2.7.2000 no action was taken by him to hasten the completion of the appellate examination. The petitioner could have contacted the required authority through his Commanding Officer for early completion of the medical board is the plaintive response in the counter affidavit. On the merits of the petitioner's claim, it is stated that the SCO-6th course commenced on 29.4.2000; the medically fit status (of the petitioner) reached the Additional Director General (Recruiting) on 24.8.2000, 117 days after the commencement of the SCO-6th course. Therefore, he could not be inducted as the last date of induction was 29.4.2000. Responding to the petitioner's reference to the 2nd respondent's communication dated 30.8.2000, recommending his case for induction to the SCO-7th course and the obtaining of an undertaking from him, the counter affidavit implies that such a communication was addressed by the 2nd respondent on a sympathetic view taken towards the petitioner and was in the nature of a mere recommendation to the "higher headquarters." Reliance is placed in the counter affidavit on what is stated to be a "recruiting policy". It is stated that the recruiting policy is to the effect that if a candidate could not be inducted to a particular course for any reason, he cannot be inducted to the following course unless and until he goes through the entire procedure of selection afresh and comes up in merit.

The case of the respondents in substance is that the petitioner had missed out the SCO 6th course on account of his belated appellate medical examination and he could not be inducted into SCO 7th course on account of the aforesaid policy. The counter affidavit reiterates that the onus and the responsibility for not being inducted to the SCO 6th course is on the petitioner. The petitioner is also blamed for what is characterized as the inordinate delay in the receipt of the appellate medical board proceedings i.e. by 117 days.

No statutory provision or a policy incorporated in any legislative instrument is brought to the notice of this court which disables the authorities of the Indian Army to restitute the petitioner for the injury suffered by him as a result of the delay by the appellate medical board, a department under the administrative control of the Indian Army. The petitioner was found medically unfit by the Secunderabad Medical Board, another instrumentality of the Army, on 29.3.2000. On the same day he petitioned for Appellate medical scrutiny. The entirety of the delay thereafter is on account of the interminable and meandering communication procedures adopted by the respondents-deputing the petitioner to Pune in the first instance and thereafter to the Base Military Hospital at New Delhi, and in failing to expeditiously follow up the petitioner's appellate medical examination. For the delayed forwarding of the petitioner's medical record and the laidback attitude of the Appellate Medical Board, it is rather surprising that the respondents blame the petitioner. The petitioner does not administer the medical units of the Indian Army, the Indian Army does or ought to. It is the respondents' who have owe responsibility for the petitioner's delayed medical examination. Why it is impermissible for the petitioner to be inducted for training into the course commencing immediately after the petitioner's appellate medical report was received is not stated except referring to a "recruiting policy". What the recruiting policy is; by which class of an instrument it is ordained, what is the status of such an instrument; whether such policy is an impregnable barrier; and what could be the deleterious consequences of the petitioner being sent for training to a SCO course commencing immediately after his medical fitness has been declared by the appeal board; are all matters on which the silence in the counter affidavit is pregnant.

This court finds no justification for the conduct of the respondents in denying the petitioner his just desserts and for failing to restitute the injury caused to him, on account of the respondents' irregularity or negligence, as the case may be, in expeditiously taking up the case of the petitioner for appellate medical examination.

The petitioner cannot be made to suffer for such negligence or lethargy of the respondents. The petitioner is entitled to relief.

On the analysis above, the writ petition is allowed. The respondents are directed to send the petitioner for training to the SCO training course commencing after this order and without demur. The case of the petitioner for such training shall not be rejected on the ground of any policy as has been pleaded in the counter affidavit. The petitioner shall be sent for such training as directed above, on the basis of his selection by the No.22 Service Selection Board which found him eligible and otherwise fit for grant of Special Commission as evident from the communication letter No.22SSB/1008/1/A dated 18.2.2000.

Writ Petition is allowed as above. There shall be no order as to costs.

GODA RAGHURAM, J

Date: 09.12.2005

Note: CC in one week.

BO cvm

